

SENATE BILL NO. 119

INTRODUCED BY D. BERRY

BY REQUEST OF THE DEPARTMENT OF REVENUE AND THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE TAX ON THE PURCHASE AND USE OF CIGARETTES FROM 18 CENTS A PACK TO ~~56~~ 40 CENTS A PACK; ESTABLISHING A TAX ON MOIST SNUFF; INCREASING THE TAX RATE ON THE WHOLESALE PRICE OF OTHER TOBACCO PRODUCTS FROM 12.5 PERCENT TO ~~45~~ 27 PERCENT; REVISING THE DISTRIBUTION OF REVENUE FROM TOBACCO PRODUCTS; PROVIDING THAT REVENUE FROM THE INCREASED TAX BE ALLOCATED FOR FUNDING EDUCATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT A SPECIAL ELECTION; AMENDING SECTIONS 16-11-111, 16-11-119, 16-11-201, AND 16-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~48-56~~ 40 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a

1 system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department
2 for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based
3 on whether the quota, as established in a cooperative agreement between the department and an Indian
4 tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon
5 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation
6 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given
7 a credit or refund. Once the quota has been filled, the department shall immediately notify all affected
8 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will
9 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota
10 periods or between reservations.

11 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming
12 the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the
13 tax due on the quota allocation. The department shall determine the amount of refunds or credits for each
14 Indian reservation at the beginning of each fiscal year, using the most recent census data available from
15 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian
16 reservation."

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18 **Section 2.** Section 16-11-119, MCA, is amended to read:

19 **"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111
20 must be allocated as follows:

21 (1) The amount of ~~11.11%~~ ~~4.78%~~ 6.59% of the cigarette tax collected on each package of
22 cigarettes must be deposited in the state special revenue fund to the credit of the department of public
23 health and human services for the operation and maintenance of state veterans' nursing homes.

24 (2) The amount of ~~73.04%~~ ~~84.97%~~ 81.56% must, in accordance with the provisions of
25 15-1-501, be deposited in the state ~~general fund~~ SPECIAL REVENUE FUND FOR STATE EQUALIZATION AID.

26 (3) The amount of ~~15.85%~~ ~~10.25%~~ 11.85% must, in accordance with the provisions of
27 15-1-501, be deposited in the long-range building program account provided for in 17-7-205."

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29 **SECTION 3. SECTION 16-11-201, MCA, IS AMENDED TO READ:**

30 **"16-11-201. Definitions.** As used in this part, the following definitions apply, unless the context

1 requires otherwise:

2 (1) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that
3 is intended to be placed in the oral cavity.

4 ~~(1)(2)~~ (2) "Retailer" means any person other than a wholesaler who is engaged in the business of
5 selling tobacco products to the ultimate consumer.

6 ~~(2)(3)~~ (3) "Sale" or "sell" means any transfer of tobacco products for a consideration, exchange,
7 barter, gift, offer for sale, or distribution, in any manner or by any means.

8 ~~(3)(4)~~ (4) "Tobacco product" means a substance other than cigarettes that is intended for human
9 consumption and that contains tobacco.

10 ~~(4)(5)~~ (5) "Wholesale price" means the established price for which a manufacturer sells a tobacco
11 product to a wholesaler or any other person before any discount or other reduction.

12 ~~(5)(6)~~ (6) "Wholesaler" means any person who purchases tobacco products directly from the
13 manufacturer or from any other person who purchases from the manufacturer and who acquires the
14 products for sale to retail dealers."

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16 **Section 4.** Section 16-11-202, MCA, is amended to read:

17 **"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate**
18 **of tax.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the
19 retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any
20 other person, the payment is considered as an advance payment and must be added to the price of
21 tobacco products and recovered from the ultimate consumer or user. Any person selling tobacco products
22 at retail shall state or separately display in the premises where the products are sold a notice of the tax
23 included in the selling price and charged or payable pursuant to this section. The provisions of this section
24 do not affect the method of collection of the tax as provided in this part.

25 (2) There must be collected and paid to the state of Montana a tax of ~~12 1/2%~~ 45% ~~27%~~ of the
26 wholesale price of all tobacco products, OTHER THAN MOIST SNUFF, to the wholesaler. THE TAX ON MOIST SNUFF
27 IS 33 CENTS AN OUNCE BASED UPON THE NET WEIGHT OF THE PACKAGE LISTED BY THE MANUFACTURER. FOR PACKAGES
28 OF MOIST SNUFF THAT ARE LESS THAN OR GREATER THAN 1 OUNCE, THE TAX MUST BE PROPORTIONAL TO THE SIZE OF THE
29 PACKAGE. Tobacco products shipped from Montana and destined for retail sale and consumption outside
30 the state are not subject to this tax."

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2 NEW SECTION. Section 5. Transition. All wholesalers, distributors, and retailers shall pay the
3 difference in tax between the former tax rate and the new tax rate on ~~all~~ THAT PORTION OF inventory subject
4 to tax held by them on July 1, 2001, THAT EXCEEDS ALL INVENTORY SUBJECT TO TAX HELD BY THEM ON THE LAST
5 DAY OF THEIR MOST RECENTLY CONCLUDED INCOME TAX REPORTING YEAR.

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7 NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send
8 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little
9 Shell band of Chippewa.

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11 NEW SECTION. Section 7. Effective date. ~~[This act]~~ UPON APPROVAL OF THE ELECTORATE, THIS ACT
12 is effective July 1, 2001.

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14 NEW SECTION. Section 8. Applicability. ~~[This act]~~ THIS ACT applies to sales of tobacco products
15 made after June 30, 2001.

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17 NEW SECTION. SECTION 9. SUBMISSION TO ELECTORATE. THE QUESTION OF WHETHER SECTIONS 1 THROUGH
18 7 OF THIS ACT WILL BECOME EFFECTIVE SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT A SPECIAL
19 ELECTION TO BE HELD IN JUNE 2001 BY PRINTING ON THE BALLOT THE FULL TITLE OF THIS ACT AND THE FOLLOWING:

20 [] FOR INCREASING TOBACCO TAXES AND ALLOCATING THE INCREASED REVENUE FOR THE SUPPORT OF
21 PUBLIC EDUCATION.

22 [] AGAINST INCREASING TOBACCO TAXES AND ALLOCATING THE INCREASED REVENUE FOR THE SUPPORT
23 OF PUBLIC EDUCATION.

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